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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JOHN COLLADO, Defendant and Appellant.	H038202 (Monterey County Super. Ct. No. SS110116)

Defendant John Collado was convicted by guilty plea of battery with serious bodily injury (Pen. Code, § 243, subd. (d)) and sentenced to three years in state prison. His sole contention on appeal is that he was entitled to conduct credit calculated under the October 2011 version of Penal Code section 4019[1] rather than the conduct credit statutes in effect at the time of his January 2011 offense. He claims that even if the statutory language of the October 2011 version of section 4019 does not apply to him, it would violate equal protection to deny him the benefit of its provisions. We reject his contention and affirm the judgment.

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[1] Subsequent statutory references are to the Penal Code unless otherwise specified.

I. Background

Defendant was charged by felony complaint with a single count of battery with serious bodily injury (§ 243, subd. (d)) committed on January 11, 2011. In March 2011, defendant pleaded guilty to this count pursuant to an agreement that he would be placed on felony probation. In April 2011, the court suspended imposition of sentence and placed defendant on probation. His probation was formally conditioned on a 123-day jail sentence, for which he was given credit for time served, and he waived credits for that term. He had been in jail from January 16, 2011 to April 8, 2011. The reason for the credit waiver was that defendant was actually not entitled to any credit on this case as he had received credit for his jail time on other cases and was not entitled to dual credit. Defendant expressly agreed on the record that his credit in this case was "zero."

In January 2012, the prosecution filed a notice of violation of probation alleging that defendant had violated his probation on January 20, 2012. In February 2012, the court found that defendant had violated his probation and revoked his probation. In April 2012, the court imposed a three-year prison term. The defense argued that "credits should be calculated at 50 percent based on equal protection as well as ex post-facto." The trial court disagreed. "I'm not going to do that. I'm going to give him the 33 [percent]. I'm going to treat him like everybody else that's getting treated from that time frame, so that we can protect everybody the same way." Defendant was given credit for 76 actual days and 38 days of conduct credit calculated under the September 2010 version of section 4019. Defendant had been in jail from January 19, 2012 to the date of sentencing. He received no credit for his prior jail time because he had waived credits. Defendant timely filed a notice of appeal.

II. Analysis

Defendant claims that the court should have granted him additional conduct credit under the October 2011 version of section 4019, which provides for enhanced conduct

credit.[2] (§ 4019, subd. (f).) The first sentence of section 4019, subdivision (h) states that the statute's enhanced conduct credit provisions "shall apply prospectively and shall apply to prisoners who are confined to a county jail . . . for a crime committed on or after October 1, 2011." (§ 4019, subd. (h).) Since defendant was not confined for a crime committed after October 1, 2011, he is excluded from the prospective application of the October 1, 2011 version of section 4019.

Defendant relies on the second sentence in section 4019, subdivision (h), which he contends suggests that the enhanced conduct credit provisions were intended to apply to "days earned" by a prisoner after October 1, 2011, even if the prisoner's crime occurred earlier. That sentence states: "Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." (§ 4019, subd. (h).) He implies from this language that the inverse is true, that is, that days earned by a prisoner after October 1, 2011 must be calculated under the October 1, 2011 version of section 4019. The implication he draws is untenable. It would make the two sentences conflict, the first one limiting the new version's application to those whose crimes occurred on or after October 1, 2011, and the second one implying that it was not so limited. Since the second sentence does not actually conflict with the first sentence, it would be illogical to conclude that the Legislature intended, solely by implication, to set up a conflict between these two sentences. We disagree with defendant's claim that the second sentence "only has meaning" if we give it the interpretation he suggests. It is true that the second sentence merely points out the obvious conclusion that must be drawn from the first sentence, but that does not support his claim that the second sentence lacks meaning. The

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[2] Defendant was ineligible for enhanced conduct credit under former section 2933, subdivision (e) because he made admissions to the probation officer establishing that his current offense involved his personal infliction of great bodily injury on a non-accomplice, thereby making his current offense a serious felony. (§ 1192.7, subd. (c)(8); former § 2933, subd. (e).)

Legislature may well have wanted to make doubly sure that the new legislation was clearly prospective only (particularly after the controversy that arose over the prospectivity of a prior version of section 4019) by pointing out every possible way in which it would *not apply*, even if some of these were subsumed in others.

Defendant argues that, even if the statutory language of the October 2011 version of section 4019 does not apply to him, principles of equal protection demand that he receive the benefit of its provisions because there is no legitimate basis for distinguishing between him and those to whom the statutory provisions do apply.

"[A]n equal protection claim cannot succeed, and does not require further analysis, unless there is some showing that the two groups are sufficiently similar with respect to the purpose of the law in question that some level of scrutiny is required in order to determine whether the distinction is justified." (*People v. Nguyen* (1997) 54 Cal.App.4th 705, 714.) The two groups in this case are those who served time in jail after October 1, 2011 *for crimes committed on or after October 1, 2011*, and those who served time in jail after October 1, 2011 *for crimes committed before October 1, 2011*. While these two groups are similarly situated in many respects, they are not similarly situated with respect to "the purpose of the law in question . . . ." (*Ibid*.)

The California Supreme Court's recent decision in *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*) supports the conclusion that these two groups are not similarly situated with respect to "the purpose of the law in question . . . ." (*Nguyen, supra,* 54 Cal.App.4th at p. 714; see also *People v. Kennedy* (2012) 209 Cal.App.4th 385, 396-399 [relying on *Brown* in rejecting a contention similar to that of defendant].) *Brown* concerned a previous version of section 4019 that, unlike the October 2011 version, did not expressly state that it was to be applied prospectively. The court held in *Brown* that the statute was to be applied prospectively to time served after its effective date and further held that prospective only application of the new version of the statute did not violate equal protection because the purpose of the statute was to create an incentive for

good behavior, which could not be done retroactively. (*Brown*, at pp. 328-330.) "[T]he important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (*Brown*, at pp. 328-329.)

While here, unlike the situation in *Brown*, the distinguishing characteristic is not the time of incarceration but the time of the commission of the crime, *Brown*'s analysis is equally applicable and leads us to the same conclusion. Since the October 2011 version of section 4019 plainly stated that it did not apply to a person whose crime occurred before October 1, 2011, the "important correctional purposes" of the enhanced "incentives for good behavior" that the October 2011 version of section 4019 offered would "not [be] served by rewarding prisoners" plainly excluded from the scope of the statute and who "thus could not have modified their behavior in response." (*Brown, supra,* 54 Cal.4th at pp. 328-329.) Because defendant's crime occurred in January 2011, the provisions of the October 2011 version of section 4019 plainly did not apply to him, and thus the incentive offered by that statute to other prisoners could not have influenced his behavior in jail. Hence, as defendant was not similarly situated to those to whom the statute applied with respect to the "purpose of the law," his right to equal protection was not violated by the statutory distinction.

The fact that the Legislature expressly stated that the October 2011 version of section 4019 was intended to address the state's fiscal crisis does not mean that the purpose of the law was limited to reducing state costs. "[T]he validity of a legislative act does not depend on the subjective motivation of its draftsmen but rests instead on the objective effect of the legislative terms." (*County of Los Angeles v. Superior Court* (1975) 13 Cal.3d 721, 727; accord *Warden v. State Bar* (1999) 21 Cal.4th 628, 650.) The "objective effect" of the terms of the October 2011 version of section 4019 is to provide

an incentive to induce good behavior by those prisoners who are eligible for the enhanced conduct credit under its provisions. Since defendant is not within the eligible group, the enhanced conduct credit provided him with no additional incentive to modify his behavior in jail.

III. Disposition

The judgment is affirmed.

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Mihara, J.

WE CONCUR:

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Premo, Acting P. J.

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Grover, J.